

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
DELTA DIVISION**

**ROBERT HAYDEN MOORE, on behalf of  
himself and all others similarly situated**

**PLAINTIFF**

**VERSUS**

**CIVIL ACTION NO. 2:08CV161-P-A**

**RELIANCE STANDARD LIFE  
INSURANCE COMPANY**

**DEFENDANT**

**ORDER**

This cause is before the Court on defendant's Motion to Dismiss Plaintiff's First Amended Class Action Complaint [37]. The Court, having reviewed the motion and being otherwise fully advised in the premises, finds as follows, to-wit:

Defendant seeks dismissal of plaintiff's First Amended Class Action Complaint which alleges violations of 29 U.S.C. §§ 1104(a) and 1106(b) of the Employee Retirement Income Security Act (ERISA).

Dismissal pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure is appropriate if a party fails to state a claim under which relief can be granted. The allegations of the Complaint must be accepted as true when the Court considers whether the plaintiffs have stated a cause of action. See Cramer v. Skinner, 931 F.2d 1020 (5<sup>th</sup> Cir. 1991); cert. denied, 112 S. Ct. 298, 116 L.Ed.2d 242, 60 U.S.L.W. 3057 (1991). If the factual allegations are not "enough to raise a right to relief above the speculative level," the Court may grant the motion to dismiss. Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1965 (2007). The Complaint "must contain something more than a statement of facts that merely creates a suspicion of a legally cognizable right of action." Id.

The Court, having evaluated the instant motion under this standard, concludes that

defendant's motion is not well-taken and should be denied.

IT IS, THEREFORE, ORDERED AND ADJUDGED that defendant's Motion to Dismiss Plaintiff's First Amended Class Action Complaint [37] is not well-taken and should be, and hereby is, DENIED.

SO ORDERED, this the 25<sup>th</sup> day of September, 2009.

/s/ W. Allen Pepper, Jr.  
W. ALLEN PEPPER, JR.  
UNITED STATES DISTRICT JUDGE